COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 7318 OF 2001 (M/S)
(Old No.14/1993)

State of U.P. through
Collector, Dehradun & another. … **Petitioners**

Versus

District Judge, Dehradun
and others.

… **Respondents.**

Date 06-10-2004

Hon'ble B.S. Verma, J.

By means of this Writ Petition, the petitioner-State has challenged the judgment and order dated 13.1.1993, passed by the District Judge, Dehradun, in Review Petition No. 133 of 1991 arising out of judgment and order dated 11.9.1991 in U.L.Ceiling Appeal No. 38 of 1991, Smt. Indrawati & others Vs. State of U.P. & another, whereby the learned District Judge allowed the Review Petition and set side the order dated 11.9.1991 and held that the appellants do not possess any excess vacant land under the will of late Sri Shyam Lal.

Brief facts, giving rise to the Writ Petition, as unfolded by the record, are that under the provisions of U.P. Urban Land (Ceiling and Regulation) Act, 1976 **(*in short the Act*),** the Competent Authority, Dehradun proposed to declare an area of 1034.50 Sq.Mt. of land as excess vacant land pursuant to a return filed by Shyam Lal, Husband of respondent no.2 and father of respondent nos. 3 and 4, under Section 6(1) of the Act in respect of the agricultural land to which the Act did not apply. Shyam Lal died on 20-11-1984. He left a will dated 1-1-1984 in pursuance of which agricultural land was bequeathed by Shyam Lal in favour of the appellants and one another son Krishan Pal. Krishan Pal, son of Shyam Lal filed a returned under Section 6(1) of the Act. A draft statement was issued under Section 8(3) of the Act on 7-4-1988. The total holding of Krishan Pal was taken to be 3034.50 Sq.Mt. and

after leaving 2000 Sq.Mt., an area of 1034.50 Sq.Mt. was declared as surplus vacant land held by him by the Competent Authority vide order dated 20-12-1988. Smt. Indrawati, widow of said Shyam Lal preferred appeal before the District Judge Dehradun, which was registered as U.L.Ceiling Appeal No. 38 of 1991, Smt. Indrawati Vs. State. Ultimately, the District Judge vide judgment and order dated 11.9.1991 dismissed the appeal. Smt. Indrawati and others preferred Review Petition No. 133 of 1991 before the District Judge, which was ultimately allowed vide judgment and order dated 13.1.1993, as mentioned earlier.

The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15 of 1999. The legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttaranchal.

Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

> ***"4. Abatement of legal proceedings.- All proceedings relation to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate;***
>
> ***Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land possession of which has been taken over by the State Government or any person duly authorised by the State Government in this behalf or by the competent authority."***

As stated by the Standing Counsel, Sir Niranjan Sah, no declaration has been published under Section 10(3) of the principal Act, therefore, no question of vesting of the land in the State or taking over possession arises. The effect of the repealing Act on present case is that where for land in dispute, no declaration was

published under Section 10(3) of the Act, there is no question of vesting the land in the State or taking over possession of it. The present proceedings have to be abated and are hereby abated under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

The facts of the case are squarely covered by the judgment of the Apex Court in the case of ***"Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others" (2000, AIR, SCW, 1882).***

In view of the above, the Writ Petition has become infructuous and is dismissed as infructuous.

(B.S. Verma, J.)

RCP